

ARKANSAS SUPREME COURT

No. 06-333

JOHNNY PAUL DODSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered

January 11, 2007

PRO SE APPEAL FROM THE
CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2005-883, HON.
ROBERT HOLDEN WYATT, JR.,
JUDGE

AFFIRMED.

PER CURIAM

Appellant Johnny Paul Dodson is a prisoner incarcerated in the Arkansas Department of Correction. A jury convicted appellant of possession of a controlled substance, methamphetamine, with intent to deliver, and possession of a controlled substance, marijuana, and sentenced him to life imprisonment. After his original appeal on that conviction was dismissed, we reinstated the appeal in response to appellant's *pro se* motion. *Dodson v. State*, 356 Ark. 118, 146 S.W.3d 893 (2004) (*per curiam*). This court then affirmed the conviction and sentence. *Dodson v. State*, 358 Ark. 372, 191 S.W.3d 511 (2004). Appellant filed a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. Appellant failed to timely file notice of appeal of that order and we denied his motion for belated appeal. *Dodson v. State*, CR 05-535 (Ark. June 30, 2005) (*per curiam*). Appellant subsequently filed a petition for writ of habeas corpus in the county in which he is incarcerated, which was denied. He now brings this appeal of that order.

In his petition, appellant requested relief on the grounds that the trial court lacked jurisdiction because the prosecution amended the information after he had notified the court that he intended to rely on a defense of mental disease or defect and the court had ordered a mental evaluation, and because of a violation of the speedy-trial requirements of Ark. R. Crim. P. 28.1 - 28.3. Appellant's petition alleged that these defects rendered the judgment and commitment order invalid on its face. The circuit court denied the petition, the order stating that the allegations raised did not demonstrate that the trial court lacked jurisdiction or that the commitment was invalid on its face, and that the petitioner had not stated facts to support his claim. On appeal, appellant argues that the order was ambiguous and relied upon the appellee's response referencing a conviction and charges not at issue, and that the circuit court erred in finding the claims did not demonstrate that the trial court lacked jurisdiction.

The circuit court's order was not ambiguous, as appellant contends, and clearly indicated that appellant had failed to state grounds for relief. It is well settled that the burden is on the petitioner in a habeas corpus petition under Ark. Code Ann. 16-112-103 (1987) to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, ___ S.W.3d ___ (2006) (*per curiam*). Regardless of the appellee's response, the circuit court correctly denied appellant's petition because he failed to plead grounds to support issuance of the writ. Indeed, this court will not permit an appeal of an order that denied a petition for writ of habeas corpus to proceed where it is clear that the petition did not state appropriate grounds for relief. *See id.*

A petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.*;

see also Wallace v. Willock, 301 Ark. 69, 781 S.W.2d 478 (1989). Appellant attempts to couch his claims as demonstrating a lack of authority by the trial court, but the claims in appellant's petition only assert alleged procedural defects that do not show any invalidity of the commitment that is clear on its face or that there is any lack of subject-matter jurisdiction. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. *Friend v. Norris*, 364 Ark. 315, ___ S.W.3d ___ (2005) (*per curiam*). The type of issues raised by appellant are precisely those which should be raised on direct appeal or limited to relief pursuant to a timely petition for postconviction relief under Ark. R. Crim. P. 37.1, provided that the claimed violation was sufficient to void the judgment.

Appellant contends that his speedy-trial argument is not the same as that raised on direct appeal, yet, whether the argument was raised or not, appellant could have appropriately raised the issue at that time. Appellant may not now attempt to bring such a claim in a petition for the writ simply by asserting the alleged trial error should void the judgment.

Both appellant's claim asserting a speedy-trial violation and his claim that the information was not properly amended would require factual inquiry well beyond that appropriate to a habeas corpus proceeding. Moreover, neither claim challenges the trial court's subject-matter jurisdiction or authority to convict and sentence him. Although appellant alleges that the information charging him was defective, his claim is not one that can be resolved without inquiry beyond the face of the documents. Once again, such a challenge could have been brought through direct appeal or a Rule 37.1 petition. Because appellant did not state grounds for relief through a writ of habeas corpus in his petition, we affirm the denial of the petition by the circuit court.

Affirmed.